

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

**Caption in Compliance with D.N.J. LBR 9004-2(c)**

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In Re:

BED BATH & BEYOND INC., et al.,<sup>1</sup>

Debtor(s)

Chapter 11

(Jointly Administered)

Case No.: 23-13359-VFP

Judge: Vincent F. Papalia

**LIMITED OBJECTION OF TFP LIMITED TO NOTICE TO CONTRACT PARTIES TO POTENTIALLY  
ASSUMED EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

TFP Limited ("TFP"), by and through its undersigned attorneys, hereby files its Limited Objection to the *Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases* (the "Notice") [ECF 714], and in support thereof states as follows:

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<sup>1</sup> The last four digits of Debtor Bed Bath & Beyond Inc.'s tax identification number are 0488. A complete list of the Debtors in these chapter 11 cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is 650 Liberty Avenue, Union, New Jersey 07083.

### **Background**

1. On April 23, 2023 (the “Petition Date”), the Debtors Bed Bath & Beyond Inc, *et al.* (“Debtors”) filed Voluntary Petitions for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §101 *et seq.* (the “Bankruptcy Code”). Debtors continue to manage their properties and operate their businesses as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

2. TFP and Debtor Bed Bath & Beyond Inc. (“Debtor BBBI”) are parties to that certain Lease Agreement dated as of September 12, 2000, as subsequently amended and/or modified (the “Lease”), with respect to premises consisting of approximately 30,057 square feet of "Floor Area" and approximately 1000 square feet of mezzanine level space for office purposes located at The Arena Hub Plaza, Mundy Street, Wilkes-Barre, PA 18711 (the “Premises”) in the shopping center known as The Arena Hub Plaza (the “Shopping Center”).

3. Debtor BBBI operates its Store #377 from the Premises.

4. The Premises is a “shopping center” within the meaning of § 365(b)(3) of the Bankruptcy Code.

5. On June 13, 2023, the Debtors filed the Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases (“Notice”) (ECF #714) in connection with a potential assumption and assignment of the Lease and other unexpired nonresidential real property leases.

6. The Notice provides that the “Cure Payment” due to TFP as a prerequisite to the assumption and assignment of the Lease is \$13,226.33. *See* Notice, #1870, p. 38 of 46.

7. The Notice also states as follows:

PLEASE TAKE FURTHER NOTICE that if no objection to (a) the Cure Payments, (b) the proposed assignment and assumption of any Executory Contract or Unexpired Lease, or (c) adequate assurance of the Successful Bidder's ability to perform is filed by the Cure Objection Deadline, then (i) you will be deemed to have stipulated that the Cure Payments as determined by the Debtors are correct, (ii) you will be forever barred, estopped, and enjoined from asserting any additional Cure Payments are due under the Executory Contract or Unexpired Lease, and (iii) you will be forever barred, estopped, and enjoined from objecting to such proposed assignment to the Successful Bidder on the grounds that the Successful Bidder has not provided adequate assurance of future performance as of the closing date of the Sale Transaction.

Notice, p. 3 of 46.

8. TFP objects to the proposed Cure Payment and to the assumption and/or assignment of the Lease unless and until Debtors provide adequate assurance of future performance. TFP further reserves its rights respecting any assumption and/or assignment of the Lease.

### **Objection to Stated Cure Payment**

9. Debtors are required to cure all defaults existing under the Lease as a condition precedent to Debtors' assumption and/or assignment of the Lease. See 11 U.S.C. § 365(b)(1)(A).

10. Debtor BBBI's payments under the Lease were in arrears in the amount of \$74,049.71 ("Debtor BBBI's Arrearage") as of the Petition Date, summarized as follows:

Date	Description		Reference	Amount	Applied	Balance
15-Dec-2021	Stormw ater	Utility charge for stormw ater mana	9460	2,546.64	0.00	2,546.64
31-Dec-2021	Sew er	Tenant's reimb of sew er exp	9566	581.46	0.00	3,128.10
25-Oct-2022	Sew er	Tenant's reimb of sew er exp	10146	1,011.31	0.00	4,139.41
27-Feb-2023	Sew er	Tenant's reimb of sew er exp	10437	87.40	0.00	4,226.81
27-Feb-2023	Water	Water Utility Charge Quartely	10474	455.74	0.00	4,682.55
01-Mar-2023	NonCAM	Tenant Specific recoverable charg	10486	329.00	0.00	5,011.55
01-Mar-2023	RE Tax	Real Estate Taxes	10510	34,708.99	0.00	39,720.54
10-Mar-2023	Stormw ater	Utility charge for stormw ater mana	10600	2,546.64	0.00	42,267.18
01-Apr-2023	CAM	Common Area Estimate	10567	3,500.00	-1,112.00	44,655.18
01-Apr-2023	Insurance	Insurance Charge	10567	670.00	0.00	45,325.18
01-Apr-2023	SC Rent	Rent Shopping Center	10567	28,804.63	-7,681.23	66,448.58
22-Apr-2023	CAM PY	Prior Year Common Area Main Re	10649	7,601.13	0.00	74,049.71
Current		31 - 60 Days	61 - 90 Days	91+ Days	Amount Due	
	\$0.00	\$31,782.53	\$37,584.63	\$4,682.55	\$74,049.71	

11. Additionally, Debtor BBBI remains obligated to TFP for all payment obligations, including without limitation all rent, CAM charges, real property taxes, stormwater management, sewer and water utilities, and insurance which are due and which will come due as of and including the effective date of Debtor BBBI's assumption of the Lease.

12. TFP is entitled to receive a Cure Payment equal to Debtor BBBI's Arrearage plus all other amounts owing under the Lease as of and including the effective date of Debtor BBBI's assumption of the Lease as a condition precedent to the assumption of the Lease.

**Objection to Proposed Assumption and Assignment**

13. Debtors are required to provide TFP adequate assurance of future performance under the Lease as a condition precedent to the assumption and/or assignment of the Lease. 11 U.S.C. § 365(b)(1)(C).

14. The Bankruptcy Code further requires specific additional and heightened requirements for the provision of adequate assurance of performance when, as here, the lease to be assumed and assigned is a lease of real property in a shopping center. 11 U.S.C. § 365(b)(3).

15. Debtors have not yet provided notice of the actual assumption or assignment of the Lease, have not identified the proposed assignee of the Lease, and have not provided the proposed terms of any assumption and assignment of the Lease.

16. TFP, therefore, does not have sufficient information to determine whether Debtors or any proposed assignee can provide adequate assurance of future performance under the Lease.

17. TFP objects to any assumption and/or assignment of the Lease unless and until adequate assurance of future performance is provided in compliance with Section 365 of the Bankruptcy Code.

**Reservation of Rights**

18. TFP reserves its right to object further to Debtors assumption and/or assignment of the Lease and reserves its right to further object to any such assumption and/or assignment of the Lease.

WHEREFORE, TFP respectfully requests the entry of an order sustaining this objection and granting TFP such additional relief as is just and appropriate under the circumstances.

Gorski & Knowlton PC  
Attorneys for TFP Limited

/s/ Carol L. Knowlton  
By: \_\_\_\_\_  
Carol L. Knowlton